



COMDTINST 5350.20
12 OCT 1990

COMMANDANT INSTRUCTION 5350.20

Subj: Civil Rights Compliance by Recipients of Federal Financial Assistance from the Coast Guard.

1. PURPOSE. The purpose of this instruction is to implement the provisions of Title VI of the Civil Rights Act of 1964, as amended (Public Law 88-352), and of various other Federal statutes and regulations that prohibit unlawful discrimination in any program or activity receiving Federal financial assistance from the Coast Guard.
2. DIRECTIVES AFFECTED. COMDTINST 5350.8A is cancelled.
3. REFERENCES. References (a) through (i) provide the specific authorities for the various elements of this program.
 - a. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-d4)
 - b. DOT Regulation, Title 49, Code of Federal Regulations (CFR), Part 21 and Part 23, as applicable, (revised as of October 1, 1982, CFR), "Nondiscrimination in Federally-Assisted Programs of the DOT-Effectuation of Title VI of Civil Rights Act of 1964".
 - c. Department of Justice Regulation, Title 28, CFR, Subpart F, Part 42, "Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs".
 - d. Department of Transportation Order, DOT 1000.12, "Implementation of the DOT Title VI Program".
 - e. Department of Transportation Order, DOT 1050.2, "Standard DOT Title VI Assurance".

3.
 - f. Title IX of the Education Amendments of 1972.
 - g. Section 504 of the Rehabilitation Act of 1973.
 - h. Age Discrimination Act of 1975.
 - i. Civil Rights Restoration Act of 1987 (Public Law 100-259, of March 22, 1988).
 - j. COMDTISNT M16755.1 (National Recreational Boating Safety Financial Assistance).
 - k. COMDTINST M16755.2 (Financial Assistance Program for National Nonprofit Public Service Organizations).
4. POLICY. No person in the United States on the basis of race, color, national origin, sex, handicap, or age as covered under Title VI of the Civil Rights Act of 1964 and other related authorities shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any form, in any program or activity receiving Federal financial assistance from the United States Coast Guard. It is the policy of the Department of Transportation and the U. S. Coast Guard to award and to continue to provide Federal financial assistance only to those applicants and recipients who comply fully with all the Title VI Program requirements, and other related civil rights/nondiscrimination Federal statutes and laws, and regulations.
5. SCOPE. The provisions of this instruction are applicable to all organizational entities of the U. S. Coast Guard and provide requirements and guidelines for recipients of Federal financial assistance to implement the Title VI Program requirements, and comply with all other related Federal Statutes. The related civil rights laws and regulations are listed under paragraph 3, of this instruction.
6. DEFINITIONS.
 - a. Affirmative Action. Taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve all beneficiaries (organizations, communities and persons) in all federally assisted programs.
 - b. Agency. Any agency of federal agency refers to any federal department or agency which extends Federal financial assistance of the type subject to Title VI, and other related program statutes.
 - c. Applicant. One who submits an application, request, or plan to be approved by a Coast Guard official or by a primary recipient as a condition to eligibility for Coast Guard financial assistance; an application means such an application, request, or plan for Federal financial assistance.

6. d. Beneficiary. Any state, territory, possession, nonprofit institution of higher learning, and/or nonprofit organization whose primary purpose is support of the Coast Guard's responsibilities under the Federal financial assistance programs. Also, any person or group of persons entitled to receive benefits, directly or indirectly from the funded programs (citizens, communities, etc.).
- e. Citizen Participation. An open process in which the rights of the community to be informed, to be provided and to receive any and all benefits are met through a full opportunity to be involved and benefit from those services resulting from Federal financial assistance or any other similar services (i.e. use of Coast Guard personnel and facilities and donated materials, etc.).
- f. Compliance. The satisfactory condition existing when a recipient has met the implemented all the Title VI program and related Federal Civil Rights requirements or can demonstrate that every good faith effort toward achieving this end has been made in their delivery of program services.
- g. Compliance Review. The procedure followed by the Coast Guard to review the practices of the recipients to determine whether they are in compliance with Title VI requirements.
- h. Covered Employment Practices. Such practices are those which exist in a program covered by Title VI where a primary objective of the Federal financial assistance is to provide employment, or if those practices would result in discrimination on the basis of race, color, national origin, sex, handicap or age against beneficiaries or potential beneficiaries of federally assisted program services and benefits.
- i. Deficiency Status. The interim period, during which the recipient has been notified of deficiencies, has not voluntarily complied with Title VI program requirements, but has not been declared in noncompliance by the Secretary of Transportation.
- j. Discrimination. The act (or action) whether intentional or unintentional, through which a person, or group of persons in the United States, solely because of race, color, sex, national origin, handicap or age has been excluded from participation in, denied the benefits of, or has been otherwise to unequal treatment under any program or activity receiving financial assistance from the Coast Guard.

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6. k. Federal Financial Assistance. Financial aid provided by the Coast Guard to a recipient, but does not include a direct Federal procurement contract. The financial aid may be provided directly in the form of actual money, or services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially. Federal assistance includes the following:
- (1) Grants and loans of Federal funds.
 - (2) The detail of Federal personnel.
 - (3) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.
 - (4) The sale or lease of, and the permission to use (on other than a casual or transient basis), Federal property or any such interest in the property without consideration of at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient.
- l. Handicapped Person. Any person who has a physical, mental, or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
- m. Noncompliance. Failure of a recipient to meet prescribed requirements and an apparent lack of good faith effort in implementing all of the Title VI and related nondiscrimination Federal program requirements.
- n. Post-Award Compliance Review. An assessment of compliance with Title VI and other related program requirements after receiving Federal financial assistance from the Coast Guard.
- o. Pre-Award Compliance Review. An examination by Coast Guard of the assurance agreement and supportive documentation submitted by the applicant upon receipt of application for, or renewal of, Federal financial assistance.
- p. Primary Recipient. A recipient who receives Coast Guard financial assistance and passes some or all of this assistance on to another recipient.

6. q. Program. Any undertaking by a recipient to use Coast Guard financial assistance and includes the entire activity, any part of which receives Coast Guard financial assistance to provide an activity for the provision of services, financial aid, research or other benefits to the general public. This includes education or training, employment opportunities, health, welfare, rehabilitation, housing or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.
- r. Qualified Handicapped Person. Any handicapped person who meets the essential eligibility requirements for the receipt of such services, or benefits from a recipient and can achieve the purpose of the program with reasonable accommodations.
- s. Recipient. Any state, territory, possession, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands or any political subdivision, or instrumentality thereof or any public or private nonprofit agency, institution, or organization, or other entity, or any individual, in any state, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, either directly, indirectly or through another recipient for any program.
- t. Reasonable Accommodation. Steps taken by a recipient to enable a handicapped individual or group to perform the essential functions of a job or service or to achieve the purpose of the program under which the beneficiary is required to achieve such as, making the programs and facilities accessible to qualified handicapped persons, job restructuring, if necessary, and provisions of aids. (For details see Uniform Federal Accessibility Standards, 36 CFR part 1190). This does not include modifications in the fundamental nature of a program or actions which cause an undue hardship to a recipient. Handicapped in this sense, means any person or group who has a physical, mental, or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. (For details see 43 CFR 17.202).
- u. Secretary. The Secretary of Department of Transportation (or noted as the Department).
- v. Title VI Program. The system of requirements developed to implement Title VI of the Civil Rights Act of 1964 and related Federal authorities. Reference to this instruction to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin, handicap or age in any programs receiving Federal financial assistance of the type subject to Title VI itself, as cited in the Civil Rights Restoration Act of 1987.

7. RESPONSIBILITIES.

- a. Commandant (G-H). Commandant (G-H) is responsible for the full affirmative implementation of civil rights, and equal opportunity precepts and this instruction in accordance with the requirements of Title VI of the Civil Rights Act of 1964; 49 CFR, Part 21 and related nondiscrimination statutes and regulations on Federal financial assistance. Commandant (G-H) will:
 1. Establish requirements using pre-award and post-award reviews and on-site visits as necessary.
 2. Make the required determinations regarding compliance/noncompliance with Title VI and all other related laws and regulations.
 3. Process complaints of discrimination that are received in accordance with the procedures found herein.
 4. Provide technical assistance where needed.
- b. Each Headquarters Program Director who conducts a program(s) under which Federal financial assistance is provided as described in paragraph 6k, above, is responsible for assisting in implementing, coordinating, monitoring and reporting of Title VI compliance that is within the scope of their purview. They shall insure that applicants for Federal financial assistance grants submit the required documentation and assurance.
- c. The Area Commanders, Maintenance & Logistics Commanders, District Commanders, and Heads of other organizational elements. The Area Commanders, Maintenance & Logistics Commanders, District Commanders, and Heads of other organizational units are responsible for assisting in the implementation of this instruction at the request of program directors as it applies to Title VI, and references paragraph 3 (a) through (i) for Federal financial assistance programs in their commands.
- d. Recipients (Applicants). Each state, territory, possession, The District of Columbia, Puerto Rico, America Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or any political subdivision or instrumentality thereof or any public service or private nonprofit agency or organization administering a continuing program which receives Federal financial assistance from the Coast Guard is required to establish a Title VI compliance program for itself and any other recipients which obtain Federal assistance through it.

8. REQUIREMENTS.

- a. The Department of Justice and Department of Transportation regulations implementing Title VI require the Coast Guard to monitor, collect data and other information; and perform pre-award and post-award compliance reviews to certify the compliance or noncompliance with Title VI and other referenced laws and regulations as specified in Enclosure (1), Part I.
- b. All applicants for Federal financial assistance are required to submit a Title VI assessment of their program. Commandant (G-H) shall establish requirements so as to ensure that the purpose of its Title VI program is achieved; shall examine in detail the nature and structure of programs and activities for which the Coast Guard provides Federal financial assistance; and shall require submission of information from applicants and recipients of such assistance to determine civil rights compliance. The format and specific requirements for Title VI assessment are in Enclosure (1), Part I.
- c. Every state and state agency that receives Federal financial assistance is required to establish a Title VI compliance program; to provide for the assignment of Title VI responsibilities to designated state personnel; and to comply with all referenced authorities including the maintenance of records necessary to permit Coast Guard officials to determine the Title VI compliance of the state agencies and their subrecipients. Every state or state agency that receives Federal financial assistance, in addition to the above stated requirements, shall provide for such methods of administration for the program which will give reasonable guarantee that all recipients under such program will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, as amended, and any other related nondiscrimination status.
- d. Each recipient shall make available to the public upon request these Title VI instructions and any other regulations governing Federal financial assistance and equal opportunity. To participants, beneficiaries, and other interested parties, each recipient shall make available information regarding the recipient's Title VI program to include at a minimum the following:
 - (1) A poster stating the operations of the program is subject to the nondiscriminatory requirements under Title VI;
 - (2) Summarize such requirements, e.g. Statement of Rights;
 - (3) Explain the availability of Title VI information from the recipient, and
 - (4) Briefly explain the procedures for filing a complaint.

8. e. The recipient shall notify the general public of their right to file a formal complaint of discrimination and shall outline the procedures for filing such a complaint, which are contained in Enclosure (1), Part II.
 - (1) Information on Title VI complaint procedures and the rights of beneficiaries must be in the form of a nondiscrimination notification clause and where appropriate, in languages other than English. This clause must be included in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the Federally-Assisted programs or activities conducted by the recipient.
 - (2) Administrative assistance to direct the most expeditious filing and resolution of the complaint.
- f. The recipient shall submit to the Department, its proposal for correcting any noncompliance problems identified by the complaint investigation, application review, or field compliance review and cited in the notification of findings issued by Commandant (G-H) within thirty days of receipt of an invitation to informal resolution. The result of these informal resolutions will be set forth in a written report prepared by Commandant (G-H); a copy of which will be provided the recipient, after its approval by the Departmental Office of Civil Rights.
- g. All recipients are required to submit semi-annual compliance reports To Commandant (G-H). These reports shall provide updated information in those categories of data required as part of the Title VI Assessment (referenced in Enclosure (1), Part I, pages 1 through 3). In addition, each recipient shall keep such records and submit to the Coast Guard accurate, complete and timely compliance reports at such times, and in such form and containing such information, as the Coast Guard may determine to be necessary to ascertain whether the recipient has complied or is complying with the Title VI requirements set forth in references paragraph 3 (a) through (i) of this instruction.
- h. References in paragraph 3 (a) through (i) of this instruction require that there be a system for responding to complaints of discrimination in the use of Federal financial assistance. Any person who believes that he or she, either individually or as a member of a specific protected class of persons, has been subjected to discrimination as prohibited by this instruction may personally, or by a representative, file a written complaint with the Secretary of Transportation. Applicants, recipients and/or subrecipients are encouraged to adopt separate procedures for local disposition of Title VI complaints which are consistent with the detailed guidelines in Enclosure (1), Part II.

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9. RESPONSIBILITIES.

- a. Commandant (G-H) shall administer the Title VI compliance program in accordance with requirement herein and directives contained in references (a) through (i).
- b. Program Managers for grants programs shall require all grant applicants to submit Title VI self assessments with their application packages.

10. ACTION. Area and district commanders, commander of maintenance and logistics commands, unit commanding officers and Commander, CG Activities Europe shall insure that this instruction is given the wildest possible dissemination.

/s/ J. W. KIME
Admiral, U.S. Coast Guard

Encl: (1) Title VI Guidelines for Applicants/Recipients
(2) DOT/CG Title VI Assurance
(3) OMB approved Assurance Form (OMB #0348-0040)

TITLE VI GUIDELINES FOR APPLICANTS/RECIPIENTS

PART I

Applicant's Title VI Assessment.

All applicants, recipients, and subrecipients of the Federal financial assistance program are required to maintain and provide a Title VI compliance assessment along with their application to the Coast Guard. This compliance assessment is required by the referenced regulations in paragraph 3(b), of this instruction and must be submitted to Coast Guard prior to approval of any grant application or any other applicable assistance. This self-initiated Title VI Assessment should contain information sufficient to permit an initial determination of whether the applicant will probably comply fully with the Title VI requirements. Also, it should contain the applicant's analysis of the effects of the proposed use of the Federal financial assistance upon Title VI concerns. Updated compliance assessments should be provided as conditions warrant, but must be provided every three years at a minimum by all recipients. Assessments submitted previously under this instruction's reporting requirements may be referenced in subsequent submissions as appropriate. Title VI assessments shall be maintained by all recipients and submitted to Coast Guard in the format and content specified below under Pre-Award Application Review.

Pre Award Application Review.

Prior to approval of Federal financial assistance and in the case of any applications for approval of specific projects or significant changes for continuation or renewal of assistance as cited in 28 CFR 50.3(c) IIB, a written determination shall be made by Commandant(G-H) as to whether the applicant is in compliance with Title VI requirements (reference: 28 CFR 50.3(c) IIA). The determination shall be of compliance and a review of the supportive Title VI compliance assessment data required by DOT Order 1000.12, and discussed below. Where a determination of compliance cannot be made from this Title VI assessment review, applicants will be requested to submit additional information and could be evaluated through communicating with state and local government officials, community-based minority and protected group organizations, special interest groups, and/or onsite field reviews. Applicants/Recipients should include as a minimum, the following information in their assessments:

1. Documents showing all complaints, administrative processes and lawsuits for the last three years naming the complaint which alleges discrimination on the basis of race, color, national origin, handicap, sex, or age with respect to services or other benefits provided by Federal financial assistance. These documents should include:
 - a. The complainant's(s) name, address, telephone number date filed;
 - b. the allegation(s); bases;
 - c. the status of the complaint or lawsuit including whether the parties to the complaint or lawsuit have entered into a resolution, a negotiated agreement or consent degree with supportive documents.

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For all applicants for Coast Guard assistance, this information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part.

2. Documents showing all pending applications for financial assistance and all financial assistance currently provided by other Federal agencies; for all applicants for Coast Guard assistance, this information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part.
3. Documents showing all Title VI compliance review activities conducted in the last three year period by any Federal agency before the current application. This information should be relevant to the organizational entity actually submitting the application. The documents should include:
 - a. the purpose or reason for the review; date completed;
 - b. the name of the agency or organization that performed the review;
 - c. the findings and recommendations of the review; and
 - d. a report on the status and/or disposition of such findings and recommendations.
4. A signed standard Department of Transportation's Title VI Assurance Form (This will be a one-time submission maintained as a part of the Coast Guard, Title VI Compliance file).
5. A signed Coast Guard adopted and OMB Approved Civil Rights Assurance Form indicating compliance in that all of the records and other information required under Title VI program has been or will be compiled, as appropriate, and maintained by the applicant, recipient, or subrecipient for access by the awarding agency. State administered programs should have this assurance provided by the primary recipients and subrecipients, if any;
6. New applications or applications for continuation or renewal with significant changes are to provide relevant and current Title VI program information except where determined by the Coast Guard's Office of Civil Rights to be inappropriate. Examples of data and information considered appropriate for determining compliance are as follows:
 - a. The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of the prohibited discrimination and other related bases as identified in similarly worded nondiscrimination provisions of program statutes;

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6.
 - b. The population eligible to be served, by race, color, and national origin, sex, handicap and age, as required by Title VI and other related nondiscrimination Statutes, if service is in the form of dissemination of information and publications to the public; also, the distribution scheme used to insure non-discrimination (identify any other languages used other than English in such publications);
 - c. Data regarding covered employment, including use or planned use of bilingual employees serving beneficiaries where necessary to permit effective participation by beneficiaries unable to speak or understand English;
 - d. The present or proposed membership by race, color, and national origin, sex, handicap or age on any planning or advisory board which is an integral part of the program;
 - e. The reasonable accommodations taken to enable handicapped individuals or groups to perform the essential functions of a job or service or to achieve the purpose of the program by making the programs, activities, and facilities accessible through job restructuring, if necessary, and provision of aids such as ramps, toilets, etc. (for details see Uniform Federal Accessibility Standards, 36 CFR Part 1190). This does not include modifications in the fundamental nature of a program or actions which cause an undue hardship to a recipient, but reasonable accommodations for the handicapped must be considered.
 - f. Documents showing contractors, sub-contractors, small business concerns, and/or nonprofit organizations receiving financial assistance from the recipient by identifying the following:
 1. the process and criteria used to select those organizations to receive the financial assistance;
 2. the dollar amount of each assistance and the specific purpose of the activity to include whether non-profit or for profit type organization; and the sex and ethnicity of the ownership of each contractor, or sub-contractor's organization; description of enforcement of Title VI;
 - g. Additional data as required only to the extent that it is readily available or can be complied with reasonable effort, and is found to be necessary to make the Title VI program compliance determination.

PART I

On-site Reviews.

Commandant(G-H) will conduct an on-site review which is required under the following circumstances:

1. When it is determined that a determination respecting probable compliance cannot be made on the basis of the applicant's "Title VI Assessments".
2. When a project for which a determination of probable compliance has been made on the basis of the applicant's "Title VI Assessments", within one year of the approval of Federal financial assistance for the project, or at the estimated midpoint of a project expected to be completed within less than two years.
3. At anytime, when the Director of Civil Rights, Department of Transportation believes that such a review is warranted with respect to any project.

Post-Award Compliance Review.

Commandant(G-H) will conduct post-award compliance reviews as a part of its ongoing monitoring responsibilities. These reviews will be conducted on a periodic basis of a representative number of recipients and at a minimum of at least once every three years. The review may be either a desk audit or onsite or a combination of both. This review will be conducted in conjunction with other scheduled reviews where possible although the Title VI program review process is independent of other Coast Guard review processes. This review will consider, but is not limited to the following factors:

1. Results of the pre-award application review;
2. Overall efforts made by the recipient to ensure Title VI program compliance including any compliance reports prepared by the recipient; information collected from previous reviews;
3. For onsite review, examine and verify all materials pertaining to implementation of the Title VI program and their consistency with the Title VI standards;
4. Other information that is appropriate to make a determination that the recipient or subrecipient is in compliance with Title VI and related statutes referenced in paragraph 3 of this instruction. Examples of this type of information are racial and demographic patterns and handicapped access issues such as the level of minority participation compared to the number of potentially eligible participants; and/or whether all qualified persons regardless of race, color, national origin, age, or handicapped(or sex in the case of a Federally-assisted education program) have been afforded an equal opportunity to participate as a member in any planning or selection body associated with the assistance program for which the recipient has responsibility.

PART I

Determination on Compliance.

A determination on compliance shall be made by Commandant (G-H) within 30 days of receiving the application and/or requested additional data. The determination will be based on an analysis of all data gathered and findings made as a result of a desk audit or onsite review. An assessment of a recipient's delivery of services to the minority and majority beneficiaries will be the primary focus of compliance. Failure of an applicant, recipient, or subrecipient to submit information requested by the Coast Guard may delay completion of a compliance review and delay any further consideration of a pending grant application. The determination shall be one of the following:

1. The applicant will comply in all respects with the Title VI program requirements; no further pre-award review necessary;
2. It cannot be determined without an on-site compliance review whether the applicant will comply in all respects with the Title VI program requirements; or
3. The applicant will not comply in all respects of the Title VI requirements; The applicant may ask for reconsideration within 60 days of receiving a written notice of determination from The Secretary of the Department of Transportation, Office of Civil Rights by submitting any relevant information to support compliance approval.

Resolution of Noncompliance

Every effort to achieve voluntary compliance in all instances in which noncompliance is found will be attempted by Coast Guard and the Department. Where such efforts have not been successful within a reasonable period of time, appropriate enforcement procedures shall be initiated as set forth in the referenced Department of Justice and The Department of Transportation guidelines. Agreements on the part of a noncomplying recipient to take remedial steps to achieve compliance shall be set forth in writing in the form of a remedial plan by the recipient and the Department. The remedial plan shall specify the action necessary for the correction of Title VI deficiencies and shall be made available to the public. The plan, related documentation, and the corrective action taken shall be retained by the Office of Civil Rights for three years from the date of approval of the plan.

PART II

Complaints of Discrimination.

Complaints must be submitted as follows:

1. All complaints filed under Title VI, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972 or the Age Discrimination Act of 1975 and any other civil rights statutes applicable to nondiscrimination and the Civil Rights Restoration of 1987, must be in writing, and must be signed by the complainant or the complainant's representative, and filed no later than 180 days after the alleged act of discrimination (Age time-limits differ). In the event that a complaint is made in other than written form, the official receiving the complaint must instruct the complainant to reduce the complaint to writing and submit it to the Department of Transportation, Director, Office of Civil Rights Attention: External Programs Division, Washington, D.C. 20593, and/or Commandant (G-H) U.S. Coast Guard, Chief, Office of Civil Rights, Room 2400, 2100 Second Street, S.W., Washington, D.C. 20593-0001.
 - a. The complaint should contain: name, address, telephone number of the complainant, the date the complainant had knowledge of, or when the alleged act of discrimination occurred, or where there has been a continuing course of conduct, the date on which that conduct was started, the basis of the complaint, and a description of the alleged act of discrimination, or what actually happened that initiated the filing of the complaint, and the signature of the complainant and the date complaint was filed.
 - b. Complaints must be filed within 180 days from the date of the alleged discrimination. The time limit for filing may be extended in writing only by The Secretary, Department of Transportation, or his designee, specifying the reason.
 - c. All complaints received by the Coast Guard, its applicants for and recipients or subrecipients of Federal financial assistance based upon alleged unlawful discrimination as prohibited by this instruction shall be forwarded immediately to the Department of Transportation, Director, Office of Civil Rights, Attention: External Programs Division, Washington, D.C. 20593 within 10 calendar days.

Processing of Complaints.

The receipt of every complaint shall be acknowledged in writing within ten (10) working days of receiving it. At the same time, the party charged (and the primary recipient, if the primary recipient is not the charged party) shall be notified that a complaint has been filed.

PART II

2. Determination of Jurisdiction/Investigative Merit. Based on the information in the complaint and the information provided by the Coast Guard compliance file, a determination will be made as to whether the Department has jurisdiction to pursue the matter, and whether the complaint has merit to warrant an investigation. This determination shall be made by the Departmental Office of Civil Rights within fifteen (15) working days after the receipt of the complaint and any additional information submitted by Coast Guard. A complaint shall be regarded as meriting investigation unless:
 - a. It clearly appears to be frivolous or trivial;
 - b. The party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action prior to a determination of jurisdiction and investigative merit;
 - c. The complainant withdraws the complaint prior to a determination; or
 - d. Some other good cause for not investigating the complaint exists (e.g. respondent is presently under investigation by another Federal agency).
3. If the complaint is not resolved by settlement agreement, and a determination of jurisdiction and investigative merits not made, the complainant shall be requested by the Department to provide specific additional information. This request shall be made within fifteen (15) working days of receipt of the complaint by the Department. The information requested must be furnished by the complainant to the Department within sixty (60) working days from the date of the original request. Failure on the part of the complainant to provide requested additional information may be considered good cause for a Departmental determination of no investigative merit.
4. Notification of Disposition will be sent from the Departmental Director of Civil Rights within five (5) days of Director's decision by registered mail to the complainant, party charged, and primary recipient (if not the respondent). The notification shall address investigation from two aspects. First, it shall state specifically the reason for a decision not to investigate. In the event the complaint is investigated, the notification shall state the grounds for DOT jurisdiction, inform the parties that an investigation will take place, and request any additional information needed to assist the investigator in preparing for the investigation.
5. Investigation of Complaint. The Departmental Office of Civil Rights may elect to conduct its own investigation of the complaint, or may send it back to Coast Guard for investigation. If the complaint is found to have investigative merit by the Department, the investigation may be conducted by desk audit, onsite or even a comprehensive Title VI review of the respondent.

PART II

6. Investigation and Investigative Report. An investigator will be assigned to the complaint and a letter will be sent to the recipient outlining the investigative process. A written report will be prepared at the conclusion of the investigation. This report will be reviewed by the Department and include the following:
 - (a). Summary of the complaint, including the statement of the issues raised by the complainant and the respondent's reply to each of the allegations;
 - (b). Citations of relevant Federal, State, and Local laws, rules, regulations, guidelines, etc;
 - (c). Descriptions of the investigation, including a list of the persons contacted, and a summary of the interviews conducted; and
 - (d). A statement of the investigator's findings and recommendations.
7. Disposition of Complaints. The disposition of the complaint will be communicated to the complainant and the respondent by letter upon approval or disapproval of the investigative report by the Department. Recommendations, if any, and a rationale supporting the disposition will be included in the letter. Informal resolution, enforcement procedures, and/or request for reconsideration would be identified to the respondent.

DEPARTMENT OF TRANSPORTATION TITLE VI ASSURANCE

The State of _____, (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation (DOT) it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the DOT Effectuation of Title VI of the Civil Rights Acts of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations and other pertinent directives, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under assistance from the DOT, including United States Coast Guard, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its State Recreational Boating Safety Program:

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be [with regard to a "program"] conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all State Recreational Boating Safety Programs and, in adapted form in all proposals for negotiated agreements:

The State of _____, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the DOT issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, or under such property.

7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licences, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under State Recreational Boating Safety Programs; and (b) for the construction or use of or access to space on, over, or under real property acquired, or improved under State Recreational Boating Safety Programs.

8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which the Recipient retains ownership or possessions of the property.

9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient by the Department of Transportation under the State Recreational Boating Safety Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successor in interest and other participants in the State Recreational Boating Safety Programs. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

DATE: _____

By _____
(Signature of Authorized Official)

TITLE

ATTACHMENTS: APPENDICES A, B, & C

(APPENDIX A TO TITLE VI ASSURANCE)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations**: The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination**: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the regulations, including employment practiced when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **(Recipient)** or the **DOT/U.S. Coast Guard** to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the **(Recipient)**, or the **DOT/U.S. Coast Guard** as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with nondiscrimination provisions of this contract, the **(Recipient)** shall impose contract sanctions as it or the **DOT/U.S. Coast Guard** may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies; and/or

(b) cancellation, termination, or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions**: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the **(Recipient)** or the **DOT/U.S. Coast Guard** may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the **(Recipient)** to enter into such litigation to protect the interests of the **(Recipient)**, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(APPENDIX B TO TITLE VI ASSURANCE)

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the **(Name of Recipient)** will accept title to the lands and maintain the project constructed thereon, in accordance with **(Name of Appropriate Legislative Authority)**, the Regulations for the Administration of **(Name of Appropriate Program)** and the policies and procedures prescribed by **DOT/U.S. Coast Guard** of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Acts of 1964 (78 Stat, 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise release, quitclaim and convey unto the **(Name of Recipient)** all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **(Name of Recipient)** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the **(Name of Recipient)**, its successors and assigns.

The **(Name of Recipient)**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed [,] [and]* (2) that the **(Name of Recipient)** shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Acts of 1964.

(APPENDIX C TO TITLE VI ASSURANCE)

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the **(Name of Recipient)** pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for herself/himself, his/her heirs, personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Nondiscrimination of Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, **(Name of Recipient)** shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in Deeds]*

That in the event of breach of any of the above nondiscrimination covenants, **Name of Recipient)** shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of **(Name of Recipient)** and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by **(Name of Recipient)** pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for herself/himself, his/her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in case of deeds, and leases add "as a covenant running with the land") that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of race, color, or national origin shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination, and (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

ASSURANCES — CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S. §§ 327-333) regarding labor standards for federally assisted construction subagreements.
14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (c) notification of violating facilities pursuant to EO 11738; (d) protection of wetlands pursuant to EO 11990; (e) evaluation of flood hazards in floodplains in accordance with EO 11988; (f) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (g) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (h) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (i) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

| | | |
|---|-------|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE | |
| APPLICANT ORGANIZATION | | DATE SUBMITTED |